641.

SUPREME COURT OF THE UNITED STATES.

No. ~~937~~ 57

THE LIFE AND FIRE INSURANCE COMPANY OF NEW YORK, PLAINTIFFS,

VERSUS

THE HEIRS OF NICHOLAS WILSON.

ON MOTION OF PLAINTIFFS FOR A MANDAMUS TO THE DISTRICT COURT U. S. FOR E. LOUISIANA.

INDEX.

	Original.	Print.
Petition of plaintiffs to Supreme Court U. S. for a writ of mandamus	1	1
Proceedings in the district court	5	3
Petition of plaintiffs	5	3
Affidavit of Josiah Barker to petition	13	5
Receipt of Josiah Barker for original notes referred to in petition	15	6
Mortgage referred to in plaintiffs' petition	16	6
Order of seizure and sale	26	8
Execution of said order waived	27	8
Judgment entered up	28	8
Decease of Judge Robertson	30	9
Motion to have judgment signed	33	9
Said motion overruled	36	11
Opinion of the court	38	11
Certificate of the Judge	45	13

THE LIFE AND FIRE INSURANCE COMPANY OF NEW YORK, *against* THE HEIRS OF NICHOLAS WILSON. } *No.* 2,415. *District Court of the United States, Eastern District Louisiana.*

To the Honorable the Supreme Court of the United States:

The petition of the plaintiffs above named, respectfully represents:

That Nicholas Wilson, late of Iberville, Louisiana, deceased, on the 14th January, 1824, executed and acknowledged, at New Orleans, before a notary public, a mortgage of a certain plantation, called the Evergreen, in Iberville aforesaid, with the appurtenances to the same belonging, and also thirty-five slaves, particularly named in said mortgage, for securing to your

petitioners divers sums of money, amounting together to $26,018 75, and to be paid at the following periods: $20,000 in five equal annual payments, the first payment to be made on the 18th January, 1825; $1,200, other part thereof, in six months from the 18th November, 1823, $960 in eighteen months, $720 in thirty months, $480 in forty-two months, $240 in fifty four months, $967 50 in twelve months, $725 in twenty four months, $483 75 in thirty-six months, and $242 50 in forty-eight months, all from the same 18th November, 1823, with interest; and for the whole of which sums the said Wilson passed his promissory notes. That said Nicholas Wilson, after the execution of said mortgage, departed this life. That no part of the said debt or sums having been paid, and $11,852 50 having become due, your petitioners filed their petition in the district court of the United States for the eastern district of Louisiana, against the heirs at law of said Nicholas Wilson, upon the said mortgage, (which conveyed a title importing a confession of judgment, and upon which they were entitled to a summary and executory process,) praying for an order of seizure and sale of said mortgaged premises for the payment of said debt and interest; which was thereupon granted. That afterwards, at a district court, held for the said district, on the 18th May, 1826, by the Hon. T. B. Robertson, it was adjudged and decreed that judgment be entered up in favor of the said plaintiffs for all the said notes which had become due, [specifying each] with interest; and that whenever any of the said notes, which had not then arrived at maturity, should become due and payable, judgment should be entered up for the plaintiffs upon all and every the said notes as they should arrive at maturity, until final payment. And it was further adjudged and decreed that there should be a stay of execution on the said judgment until the 18th January, 1829; and that, if the said judgment should not then be paid, with interest and costs, the said slaves and moveable property, described in said mortgage, should be sold to satisfy the said judgment; all of which was entered on the minutes of the said court. That, by a statute of Louisiana,* adopted by, and regulating the practice of, the said district court, in this respect, "all judgments rendered by the said court shall be pronounced in open court, and be entered on the minutes of the court by the clerk, and shall, three days thereafter, if not set aside by the court upon a motion for a new trial, be signed by the presiding judge of the court." That a new trial was never applied for or granted. That, before the time had arrived when execution, in pursuance of the said judgment, could have issued thereon, and before the said judgment had been signed by Judge Robertson, he departed this life, to wit, in the autumn of 1828. That the said debt, still remaining unpaid, your petitioners, on the 21st May, 1832, after due notice thereof to, and appearance by, the defendants, made application to the present judge of the said district court, (Hon. Samuel H. Harper,) and moved that he sign the said judgment, and order execution to issue thereon; which motion the said Samuel H. Harper overruled, and refused to sign the said judgment, on the

* By act of Congress of May 26, 1824, the practice of the State courts in Louisiana was adopted in the district court of the United States. The practice, as it existed then, is preserved in that court, although the practice in the State courts has been changed by the code of practice which went into operation on the 2d October, 1825. The statute regulating the practice in civil cases, under which all proceedings were conducted anterior to the adoption of the code of practice, was passed on the 10th April, 1805. The above citation is from the 11th section, see 2 Martin's Digest, 164.

ground that he, as the successor of Judge Robertson, could not sign the same, but that the judgment must be, and could only be, signed by the judge who pronounced it; otherwise that it became a nullity. In confirmation of all which allegations, your petitioners refer to a duly certified copy of the record of said suit, and of the opinion of said Samuel H. Harper, accompanying this petition. And conceiving that they are entitled to have the said judgment signed, and to have the full benefit thereof by execution thereon, therefore, your petitioners pray that a writ of mandamus do issue from your honorable court, directed to said Samuel H. Harper, judge of the district court of the United States for the district of Louisiana, ordering him to sign the said judgment, and to direct that execution issue upon the same; and as in duty, &c.

WM. R. THURSTON,
President of the Mercantile Insurance Company of New York.
W. REDIN, *Attorney for plaintiffs.*

UNITED STATES OF AMERICA, *Southern District of New York, to wit:*

William R. Thurston, whose name is above subscribed, of the said city, appeared personally before me the subscriber, Samuel R. Betts, judge of the United States, and made affirmation before me, in due form of law, that the facts stated in the aforegoing petition are true and correct. Affirmed to this 26th day of December, 1832, before me,

SAMUEL R. BETTS,
Judge of the United States for the Southern District of New York.

DISTRICT COURT OF THE UNITED STATES, *Eastern District of Louisiana, ss:*

Be it remembered, that on the 16th day of May, 1826, into the district court of the United States for the eastern district of Louisiana, came the corporation, established in the city of New York, pursuant to a law of the State of New York, called and known by the name of the Life and Fire Insurance Company of the city New York, by ——— Ripley and ——— Conrad, attorneys for said company, and filed the following petition, to wit:

To the honorable Thomas Bowling Robertson, Judge of the District Court in and for the Eastern District of Louisiana:

HUMBLY SHOWS:

The corporation established in the city of New York, pursuant to a law of the State of New York, called and known by the name of the Life and Fire Insurance Company of the city of New York, and all the individuals of which the same is composed, being citizens of said State of New York, that Nicholas Wilson, deceased, formerly a citizen of the State of Louisiana, residing in the parish of Iberville, said State, and within the aforesaid eastern district of Louisiana, at the city of New Orleans, on the sixteenth day of January, A. D. 1824, before Carlisle Pollock, a notary public in and for the said city, did make and execute the act of mortgage hereunto annexed, and prayed to be considered and referred to as part of this petition, for the purpose of securing the payment of the several sums of money in said act mentioned, amounting to the sum of twenty-six thousand and eighteen dollars and seventy-five cents; and the petitioners show that the said Wilson

did, then and there, by virtue of said act, hypothecate and mortgage to your petitioners the following enumerated and described property, to wit: all that plantation or tract of land designated and known by the name of the Evergreen, situate, lying, and being in the parish of Iberville, in this State, on the right bank of the river Mississippi, about one league below the Bayou Plaquemine, measuring twelve arpens in front on the river, by eighty arpens in depth, be the same more or less; bounded on the one side by the land belonging to Joseph Erwin, and on the other side by land belonging to Mrs. Pauline Satille, wife of Antonie Leonard, together with all the buildings and improvements on said land, and appurtenances thereunto belonging, being the same plantation or tract of land and tenements which he, the said Nicholas Wilson, acquired in the manner following, viz. the undivided half by purchase from Joseph Erwin, by act passed before the judge of the parish of Iberville, on the 17th of April, 1816, and the other undivided half by purchase from Christopher Adams, by act passed before the same judge, on the 29th of January, 1817; also thirty-five slaves, now on, and belonging to, the said plantation, viz. Ben 30 years, Rixon 30 years, Big Charles 28 years, Little Charles 28 years, John Gregg 30 years, Dick 30 years, Isaac 40 years, Nathan 30 years, Bill 25 years, Yellow Joe 30 years, Black Joe 45 years, Jenny 30 years, Fanny 25 years, Hannah 30 years, Sally 27 years, Sal 27 years, Rachel 22 years, Felicite 22 years, with her children, Nancy 4 years, Susan 27 years, Jack Hunter 33 years, John Beaver 15 years, Jerry 22 years Yellow Isaac 18 years, Kizzy 25 years, Harriet 20 years, Hester 22 years, Washington 7 years, John Carroll 7 years, Mary 7 years, Yellow Harriet 6 years, Dave 3 years, Peter 7 years, and Hester 29 years; warranted free from vices and maladies prescribed by law; all which lands and slaves, being free from incumbrance, as by the conservation of mortgages in this city, dated this day, are so to remain mortgaged until the full and entire payment of all and singular the said aforesaid promissory notes, and of all and every part thereof, according to their tenor; which said land, together with all the buildings, improvements, appurtenances, cattle, stock, implements of husbandry, and moveables, thereon, together with said slaves, are, by said act of mortgage, to remain mortgaged and hypothecated to your petitioners, until the full and entire payment of said sum of twenty-six thousand and eighteen dollars and seventy-five cents, represented by the several distinct promissory notes mentioned and enumerated in the said act of mortgage. And your petitioners further show, that said authentic act of mortgage, so executed as aforesaid, is a title imparting a confession of judgment, and that they are entitled to a summary and executory process to have the same executed. And your petitioners further allege, that no part of the said sum or sums of money, mentioned in said act of mortgage aforesaid as due to your petitioners, has been paid, but that the whole of said sum is now owing by the heirs of said Wilson to your petitioners; and that eleven thousand eight hundred and fifty-two dollars and fifty cents thereof is now due and payable, as will clearly appear by reference to the several original promissory notes, which, by the stipulations and terms of said act of mortgage, represented said sum so due and payable as aforesaid; which notes, so due, are hereunto annexed, and prayed to be considered as part of this petition; and your petitioners further show, that Nicholas Wilson, after the execution of said mortgage, departed this life at the parish of Iberville aforesaid, but on what particular day to your petitioners is unknown; and that he has left surviving his widow, Madame Eliza Erwin, and also Catharine

Wilson, a child above the age of puberty, and Lavinia Wilson, Joseph Erwin Wilson, John Nicholas Wilson, Caroline Eliza Wilson, and Alexander Wilson, children under the age of puberty; the said children being his legitimate heirs, and the said Madame Erwin being entitled to her community in the property aforesaid, and the said Madame Eliza Erwin having taken the property of the deceased, according to its appraisal and estimation; and your petitioners further allege that Robert Thompson has been appointed curator of said Catharine Wilson, the minor child of said Nicholas Wilson, over the age of puberty; and that Madame Eliza Erwin has been appointed tutrix of said Lavinia Wilson, Joseph Erwin Wilson, John Nicholas Wilson, Caroline Eliza Wilson, and Alexander Wilson, the minor children aforesaid, under the age of puberty; and your petitioners further allege, that the said widow, and all the said minor children, heirs as aforesaid, and the tutrix and curator aforesaid, reside in, and are inhabitants and citizens of, the eastern district of Louisiana; and your petitioners further show that, though amicably demanded, the said Nicholas Wilson, in his life time, or his heirs aforesaid since his death, have not paid, and refuse to pay, the said sum of money so owing by him, and now due and payable as aforesaid, to your petitioners; Wherefore, your petitioners pray an order of seizure and sale in the premises, directing the marshal of said district to seize the property, lands and slaves, cattle, stock, implements of husbandry, and moveables, on said lands, enumerated and set forth, named and described in the authentic act and title of mortgage aforesaid, and the same duly to expose to sale, and sell, for the payment of all said debt, and especially the said sum of eleven thousand eight hundred and fifty-two dollars and fifty cents, due, owing, and payable, as aforesaid, to your petitioners, with interest; and that the same may be paid to your petitioners, with interest, damages and costs; and that judgment be entered up against the heirs of said Nicholas Wilson, deceased, for the said amount, to be paid as aforesaid, with costs.

RIPLEY & CONRAD.

New Orleans, May 15, 1826.

Josiah Barker, agent of the Life and Fire Insurance Company of the city of New York, being duly sworn, declares, that the facts stated in the foregoing petition are true, and that the heirs aforesaid of Nicholas Wilson, deceased, mentioned in said petition, are indebted unto the said Life and Fire Insurance Company in the sum of twenty-six thousand and eighteen dollars and seventy-five cents; that the heirs of said Wilson are indebted to the said company in said sum, and interest, as in said petition stated, to the best of said deponent's knowledge and belief; that no part of said debt has been paid; and that the promissory notes of said Wilson, attached to said petition, are now owing, due, and payable, to the said Life and Fire Insurance Company by the heirs aforesaid of said Wilson; and that no part of said notes has been paid.

JOSIAH BARKER.

New Orleans, May 15, 1826.

Sworn to, and subscribed before me, this 15th May, 1826.

J. BERMUDEZ,

Associate Judge of the City Court of New Orleans.

The original notes referred to in the foregoing petition, having been withdrawn by the plaintiffs, the following receipt will occupy their place.

RECEIVED, *New Orleans, January* 23, 1827, of the clerk of this court, the original notes on which this suit was instituted, being six in number, all dated the 18th November, 1823. One for $4,000. One for $967 50. One for $960. One for $1,200 One for $725. One for 4,000. Also the protest of one of the notes for $4,000, dated 21st day of January, 1826.

JOSIAH BARKER.

Mortgage referred to in Plaintiffs' petition.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known, that on this day, before me, Carlisle Pollock, a notary public in and for the city of New Orleans, duly commissioned and sworn, personally came and appeared Nicholas Wilson, of the parish of Iberville, in this State, who declared and acknowledged that he is justly and truly indebted unto the Life and Fire Insurance Company of the city of New York, in the sum of twenty six thousand and eighteen dollars and seventy-five cents, lawful money of these United States, for the payment of which he has granted the following described promissory notes, viz. Five several notes, each for the sum of four thousand dollars, dated the 18th of November, 1823, subscribed by him, the said Nicholas Wilson, to the order of, and endorsed by, Joseph Erwin, of the parish of Iberville aforesaid, and afterwards endorsed by the house of trade of Messrs. William Kenner & Co., of this city, merchants, payable at the office of the Life and Fire Insurance Company, in the city of New York, at the following periods, viz. the first on the 18th of January, 1825, and the four others on the corresponding days of each succeeding year, so that the last will become due on the 18th day of January, which will be in the year 1829, making, together, the sum of twenty thousand dollars, - - 20,000 00

And for the remaining sum of $6,018 75, he has granted his nine several promissory notes, each dated the 18th day of November, 1823, payable at the office of the said Life and Fire Insurance Company, in the city of New York, to the order of, and endorsed by, the said Joseph Erwin, and afterwards by the said house of William Kenner & Co., in manner following, viz.

One note for the sum of $1,200, payable in six months, -	1,200 00
2d. One note for the sum of $960, payable in eighteen months,	960 00
3d. One note for the sum of $720, payable in thirty months,	720 00
4th. One note for the sum of $480, payable in forty two months,	480 00
5th. One note for the sum of $240, payable in fifty four months,	240 00
6th One note for the sum of $967 50, payable in twelve months,	967 50
7th. One note for the sum of $725, payable in twenty four mos.	725 00
8th. One note for the sum of $483 75, payable in thirty-six mos.	483 75
9th. And one note for the sum of $242 50, payable in forty-eight months, - - - - -	242 50
	$26,018 75

All which notes, being fourteen in number, after having been countersigned, ne varietur, by me, the said notary, for the purpose of identifying them with this act, have been, in the presence of the said notary and the undersigned witnesses, delivered unto Richard Relf, of this city, esquire, agent of the said Insurance Company, the receipt whereof he hereby acknowledges; and for the purpose of securing the said notes, when they shall respectively fall due, and also to comply with the conditions in a certain agreement, contained, made, and executed in the city of New York, on the 17th of November, 1823, which, at the request of the said parties to these presents, has been hereunto annexed, to make part of this act, for the purpose of explaining the obligations of the parties thereunto; for as much as concerns the life and fire insurance therein mentioned, he, the said Nicholas Wilson, does hereby, for himself and his heirs, specially mortgage and hypothecate unto Henry Eckford, president of the said insurance company, and his successor office, all and singular the property hereinafter described, viz. all that plantation or tract of land designated and known by the name of the Evergreen, situate, lying, and being in the parish of Iberville, in this State, on the right bank of the river Mississippi, about one league below the Bayou Plaquemine, measuring twelve arpens in front on the river, by eighty arpens in depth, be the same more or less; bounded on one side by the land belonging unto Joseph Erwin, and on the other side by land belonging unto Mrs. Pauline Satille, wife of Antonie Leonard, together with all the buildings and improvements on said land, and appurtenances thereunto belonging, being the same plantation or tract of land and tenements which he, the said Nicholas Wilson, acquired in the manner following, viz. the undivided half by purchase from Joseph Erwin, by act passed before the judge of the parish of Iberville, on the 17th of April, 1816; and the other undivided half by purchase from Christopher Adams, by act passed before the same judge, on the 29th of January, 1817; also thirty-five slaves, now on and belonging to, the said plantation, viz. Ben 30 years, Rixon 30 years, Big Charles 28 years, Little Charles 28 years, John Gregg 30 years, Dick 30 years, Isaac 40 years, Nathan 30 years, Bill 25 years, Yellow Joe 30 years, Black Joe 45 years, Jenny 30 years, Fanny 25 years, Hannah 30 years, Sally 27 years, Sal 27 years, Rachel 22 years, Felicite 22 years, with child Nancy 4 years, Susan 27 years, Jack Hunter 33 years, John Beaver 15 years, Jerry 22 years, Yellow Isaac 18 years, Kizzy 25 years, Harriet 20 years, Hester 22 years, Washington 7 years, John Carroll 7 years, Mary 7 years, Yellow Harriet 6 years, Dave 3 years, Peter 7 years, and Hester 2 years, warranted free from the vices and maladies prescribed by law; and which land and slaves, being free from incumbrance as appears by the certificate of the conservator of mortgages in this city, dated this day, are so to remain mortgaged until the full and entire payment of all and singular the said aforedescribed promissory notes, and of all and every part thereof, according to their tenor. And the said Nicholas Wilson further declared, that he does moreover, for the purpose of securing the true and punctual payment of the said notes at the times when they shall respectively become due and payable, by these presents, for himself and his heirs, grant, bargain, sell, assign, transfer, and set over, unto the President of the said insurance company, and his successor and successors in office, all the crops which should be made from year to year on the said plantation, from and after the date of these presents, and until the said obligations, and each of them, and all and every part thereof, shall have been fully paid and dis-

charged; and hereby binds himself, and his heirs, annually to ship, or cause to be shipped, the said crops from New Orleans to New York, in approved vessels, and consigned to the said president, or his successor or successors in office, to be sold on account and risk of him the said Nicholas Wilson, and at his costs, for which the said company shall be allowed to charge the premium for insurance, and the usual commission for selling the same. And Richard Relf, agent of the said insurance company, being present, declared, that he does, in his said quality, for and in their name and behalf, accept the foregoing mortgage and assignment.

Done and passed at New Orleans, in the presence of George Pollock and William Boswell, witnesses, who have signed their names with the parties, and me, the notary, this 14th day of January, eighteen hundred and twenty-four. (Signed)

N'S. WILSON,
RICH'D RELF.

GEORGE POLLOCK,
WILLIAM BOSWELL.

CARLISLE POLLOCK, *Notary Public.*

I certify the foregoing to be a true copy of the original act on record in my office. In faith whereof, I grant these presents, under my signature and the impress of my seal of office, at New Orleans, this 16th day of May, in the year of our Lord one thousand eight hundred and twenty-six.

CARLISLE POLLOCK, *Notary Public.*

Agreeably to the prayer contained in the conclusion of the foregoing petition of the Life and Fire Insurance Company of the city of New York, the following order of seizure and sale was made by his hon. T. B. Robertson, then judge of the district court of the United States for the eastern district of Louisiana.

Order of Seizure and Sale.

Let the mortgaged premises, set forth and stated in the plaintiff's petition, be seized and sold, as therein prayed for, and in the manner directed by law, subject to the payment of debt of plaintiffs.

New Orleans, May 15, 1826.

TH. B. ROBERTSON,
Judge U. S. Eastern District of Louisiana.

In *the* this case, the Life and Fire Insurance Company vs. Nicholas Wilson, it appears from the books of this office that the execution of the foregoing order of seizure and sale was waived, and that service of process was simply acknowledged.

And afterwards, to wit, on the 18th day of May, 1826, the following judgment was entered on record in the said case, viz.

District court of the United States for the Eastern district of Louisiana. Thursday, 18th day of May, 1826. The court met pursuant to adjournment: Present, Hon. T. B. Robertson.

THE LIFE AND FIRE INSURANCE COMPANY
vs.
THE HEIRS OF NICHOLAS WILSON. } *No.* 2,415.

In this case, the plaintiffs having filed, in this court, a transaction entered into between the parties, before Greenbury Ridgley Stringer, esq., a notary

public in and for the city of New Orleans, and the same being read to the court, it is thereupon ordered, adjudged, and decreed, that, in pursuance of said transaction, judgment be entered up in favor of the plaintiffs for all the notes therein specified which have become due, and payable with 7 per cent. interest thereon from the time they, and each of them, respectively, arrived at maturity, to wit: the sum of eleven hundred dollars, due on the 18th day of November, 1824; the sum of four thousand dollars, due on the 18th day of January, 1825; the sum of nine hundred and sixty dollars, due on the 18th day of May, 1825; the sum of seven hundred and twenty-five dollars, due on the 18th day of November, 1825; and the sum of four thousand dollars, due on the 18th day of January, 1826. It is further ordered, adjudged, and decreed, in pursuance of the transaction aforesaid, that whenever any of the notes mentioned in said transaction as yet not arrived at maturity, shall become due and payable, that then judgment shall be entered up for the plaintiffs upon all and every of the said notes as they arrived at maturity, with seven per cent. interest from the time they severally became due and payable until their final judgment. It is further ordered, adjudged, and decreed, that there shall be a stay of execution on said judgments until the 18th day of January, 1829; and that, if the amount of the judgment in this suit is not then paid, including principal, interest, and costs, on said day, that the said slaves and moveable property described in the mortgage mentioned in plaintiff's petition shall be sold, according to law, to satisfy the judgment in the premises. It is further ordered, that the defendants pay costs.

Before the time had arrived when execution, in pursuance of the foregoing judgment, could have issued, and before the said judgment had been signed by his honor, the late judge T. B. Robertson, he, the said judge, departed this life; and no farther proceedings appear to have taken place until the 21st day of May, 1832, when the following notice was filed in the clerk's office of the said court, to wit:

THE LIFE AND FIRE INSURANCE COMPANY, *vs.* THE HEIRS OF NICHOLAS WILSON. } *No.* 2,415. *District Court of the United States for the Eastern Dis't of Louisiana.*

Mrs. Eliza Erwin, widow of Nicholas Wilson, curatrix ad bona to Catharine Wilson, now Catharine Chesnut, and tutrix to Lavinia Barrow, heirs of Nicholas Wilson, deceased; Mrs. Eliza Wilson, widow of Nicholas Wilson; Mr. D. D. Chesnut, and Mrs. Catharine Wilson his wife, and one of the heirs of Nicholas Wilson, deceased; Mrs. Eliza Erwin, widow of Nicholas Wilson, deceased, tutrix of Joseph Erwin Wilson, Alexander Wilson, John N. Wilson, and Caroline E. Wilson, minor children and heirs of Nicholas Wilson, deceased; and Mrs. Lavinia Wilson, widow of David Barrow, deceased, and one of the heirs of Nicholas Wilson, deceased.

Please to take notice, that, on the first day of the May term next, or on such subsequent day of said term as the court may be held for the transaction of business, we shall apply to the honorable the judge of the district court of the United States for the eastern district of Louisiana, on behalf of the plaintiffs in this case, to sign a certain final judgment rendered against

you in May term of said court, 1826, and to order that execution issue thereon. *New Orleans, April 17th,* 1832.

J. R. GRYMES,
E. EUSTIS,
Att'ys for Plts.

STATE OF LOUISIANA, *Parish of Iberville:*

Personally appeared before the undersigned, a justice of the peace in and for the parish of Iberville aforesaid, William C. Thayer, who, being duly sworn, deposes and says, that, on the thirteenth April, 1832, he served a true copy of the within notice on Mrs. Eliza Wilson; on the same day served a true copy on Mrs. Lavinia Wilson, widow of David Barrow; Mrs. Catharine Wilson, wife of D. D. Chesnut; Mrs. Eliza Wilson, by delivering the same to her at her residence; and, on same day, served a true copy on Mrs. Eliza Erwin, widow of Nicholas Wilson, deceased, by delivering the same to her at her residence in the parish of Iberville.

W. C. THAYER.

Sworn to, and subscribed before me, this 30th day of April, 1832.

SIMON LABONNER,
Justice of the Peace.

The foregoing notices, and the proof of service thereof, having been exhibited to the said court on the first day of its regular term, to wit: on the 3d Monday in May, 1832, the following order was entered on the minutes of the said court, viz.

United States' District Court, May Session, 1832.

The court, this day, met pursuant to adjournment from the last day of the February term. Monday 21st May, 1832. Present: Hon. Saml. H. Harper.

THE LIFE AND FIRE INSURANCE COMPANY,
vs.
THE HEIRS OF NICHOLAS WILSON. } *No.* 2,415.

This day came the plaintiffs, by their attorneys, and exhibited notices given to the defendants, which were filed, and the proof of the same thereof; and thereupon moved the court to sign the judgment rendered in this case in May term of this court, in the year 1826, and to award execution thereon. Whereupon, on notice of the defendant, by counsel, and with the consent of the counsel for the plaintiffs, it is ordered that this motion be continued till Monday next, then to be determined.

And afterwards, to wit, on the 28th day of May, 1832, to which time the above order had been made returnable, the following order of court was made and placed upon the record of the said court, to wit:

Monday 28th May, 1832. The court met pursuant to adjournment. Present: Hon. Saml. H. Harper.

THE LIFE AND FIRE INSURANCE COMPANY,
vs.
THE HEIRS OF NICHOLAS WILSON. } *No.* 2,415.

This being the day to which the notice heretofore given to the defend-

ants had been continued, notifying them, the said defendants, that application would be made to the present honorable judge of the said court to sign the judgment rendered in this case May term, 1826, by the late Judge Robertson, the notice was read, and the question argued, by counsel, on both sides; whereof the court took time to reflect upon the said question involved.

And afterwards, to wit, on the 2d day of June, 1832, the following order was entered in the said case upon the record, to wit:

Saturday the 2d day of June, 1832. The court met pursuant to adjournment. Present: Hon. Saml. H. Harper.

THE LIFE AND FIRE INSURANCE COMPANY,
vs.
THE HEIRS OF NICHOLAS WILSON. } *No.* 2,415.

The court having maturely considered the plaintiffs' application, and the question therewith involved, doth now order that said motion be now overruled.

EASTERN DISTRICT OF LOUISIANA, *ss.*

I, Byrd B. Waller, deputy clerk of the district court of the United States for the eastern district of Louisiana, do hereby certify that the foregoing seventeen pages contain a true and faithful transcript of the record, together with all things relating thereunto in the case in said court, wherein the Life and Fire Insurance Company of the city of New York are plaintiffs, and the heirs of Nicholas Wilson are defendants, as fully as the same now remains on record in said court.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, at the city of New Orleans, this 6th day of May, 1832, and in the 56th year of the independence of the United States.

[L. S.] BYRD B. WALLER, *D. C.*

UNITED STATES OF AMERICA.

I, Samuel H. Harper, judge of the district court of the United States for the eastern district of Louisiana, do hereby certify that Byrd B. Waller, who has certified the foregoing transcript, is now, and was at the time of so doing, deputy clerk of said court, and that, to his official attestations as such, full faith and credit are due; and, further, that the attestation to such transcript is in due form of law. Witness my hand and seal, at New Orleans, this 9th day of June, 1832.

SAM. H. HARPER. [SEAL.]

The following are the reasons of the honorable the judge of the district court of the United States for the eastern district of Louisiana for his refusal to sign the judgment therein mentioned, delivered on the 2d June, 1832, and filed 5th June, 1832.

THE LIFE AND FIRE INSURANCE COMPANY,
vs
THE HEIRS OF NICHOLAS WILSON.

At the May term, 1826, Judge Robertson then presiding, the counsel for the plaintiffs moved the court to enter on the minutes judgment in this case,

founded, as was alleged, on a transaction, in the civil law sense of the word, entered into before a notary public. The entry on the minutes of the court was accordingly made. The records show that Judge Robertson held three terms of the court afterwards, and died in the autumn of 1828, without having signed those judgments. And now the plaintiffs move that I, as his successor, sign the said judgments in order to render them executory. This application is resisted by the defendants on several grounds, but principally, 1st, because they say there never was any legal judgment given; and, secondly, that the record of the proceedings does not exhibit such a case as entitled the plaintiffs to a judgment. If the first position of the defendants be correct, viz. that no legal judgment has been given, the application of the plaintiffs must fail. By a positive law of the State of Louisiana, all judgments rendered, if not set aside for legal cause within a given number of days, must be signed by the judge before execution can be taken out upon them; in other words, the judgments are not complete, or rather are no judgments at all, until they are so signed. It has long since been settled by the Supreme Court of the United States in the case of Brown vs. Van Broam, and in several other cases, that the practice under the laws of a State furnishes a rule by which the courts of the United States, sitting in that district, may proceed; and, accordingly, by the practice of signing judgments in this court in common law cases, has prevailed ever since its organization in conformity with the State practice. It was contended in argument, by the counsel for the plaintiffs, that that of signing judgments is mere formality. If that be so, this application is useless. But the fact is otherwise; for a law of this State expressly requires the signature of the judge before the judgment can be carried into effect; for there may arise sufficient reasons between the rendition of a judgment, pro forma, and the time allowed for signing it, to induce the judge to withhold his signature. That such reasons did arise in this case may be presumed; for it is a legal presumption that public functionaries perform their duty when required; and, although it is not expected that a judge will call for, and sign judgments, without being so required, yet it is strange that a party so much interested should not have made application to the judge in the course of two years to sign these judgments; and it is also remarkable that the plaintiffs' attorneys of record, who procured the making of the judgment entries, never have, to this day, made any such application; but, on the contrary, the record shows that they subsequently instituted new suits, in the name of the assignees of the original plaintiffs, against the same defendants, to recover the amount now in controversy. Why did they proceed in this manner if they had a right to the original judgments? The judge's signature to a judgment being, by our law, an essential part of it, in as much as it is a dead letter without it, it follows that he who signs it thereby makes it his own judgment. Therefore, were I to give validity to what is here called a judgment by affixing to it my signature, would it not be to pronounce on the rights of the parties whose cause I have never heard? It has been decided by the highest tribunal in this country that a *new trial* can only be granted by the judge who heard the cause; (6 Wheat., p. 542,) for no one else can be presumed to exercise a sound discretion on a subject with the circumstances of which he is totally ignorant. Where, indeed, the record, on its face is so defective that no judgment could be legally pronounced, it would be set aside for that cause only. If, then, the reason assigned for not granting a new trial by a judge who did not hear the cause, to wit, his ignorance of the circumstances attending the trial, be a good one,

it must also be sufficient for not carrying into effect the imperfect judgment of another, given on grounds of which he is ignorant. That such was the view taken by the Legislature of this State on this subject, is manifest from the 11th section of the act of 1817 on the subject; by which law it is declared that the judge, rendering a judgment, must remain long enough at the place of holding the court in order to sign it. The idea of a court never dying, and therefore carrying on its operations like any corporate body, is inadmissible; for, although the courts of the United States are not dissolved in consequence of the death of a judge, yet the business in these courts does not proceed mechanically. Every judge is an independent moral agent, accountable only for his own decisions, and not compellable to sanction those of his predecessors against his conscience, when such sanction depends on his own free will. If legal and complete judgments had been rendered in these cases, however erroneous they might be, I would have no power to correct them; for to them would be strictly applicable the rule of law, that due faith and credit must be given to such records; but, as I conceive no such legal and complete judgments have been rendered in those cases, that rule has no application to them further than respects the business of the proceedings so far as they go. Having arrived at this conclusion, it is unnecessary to discuss the other objections, made by the defendants, arising out of the proceedings themselves. Discussions on these points, I arrested at the argument on the motion, conceiving them to be irrelevant; but enough was disclosed, from the necessity of opening the case, to satisfy my mind that greater injustice would be done by sustaining the motion than by refusing it; which, for the foregoing reasons alone, is refused.

Clerk's Office of the U. S. D. Court, E. Dist. of Louisiana.

I hereby certify that the foregoing is a true and faithful copy from the opinion of the court filed in this office among the papers in the case, Life and Fire Insurance Company vs. the heirs of Wilson.

[L. S.] BYRD B. WALLER, *D. C.*

I certify that the reasons stated in the foregoing opinion are the only ones which induced me to refuse the motion.

SAM. H. HARPER,
Judge U. S. for La.